



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

Police Officer Desiree Taylor :

Tax Registry No. 940795 :

Manhattan Court Section :

FINAL

ORDER

OF

DISMISSAL
-----X

Police Officer Desiree Taylor, Tax Registry No. 940795, Shield No. 11355, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 85763/09 as set forth on form P.D. 468-121, dated October 5, 2009, and after a review of the entire record, has been found Guilty as Charged of Specification Nos. 1 and 3 through 6, and Not Guilty of Specification No. 2.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Desiree Taylor from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: ON July 26, 2011 @ 0001HRS

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

March 3, 2011

-----X
In the Matter of the Disciplinary Proceedings :

Case No. 85763/09

- against - :

Police Officer Desiree Taylor :

Tax Registry No. 940795 :

Manhattan Court Section :

-----X
At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: John D. Patten, Esq.
30 Vesey Street - PH
New York, New York 10007

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

POLICE OFFICER DESIREE TAYLOR

The above-named member of the Department appeared before me on November 19, 2010,¹ charged with the following

1 Said Police Officer Desiree Taylor, while assigned to the 75th Precinct, in or about March 2008 through June 2008, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer, with intent to defraud, deceive, or injure another, falsely made, completed, or altered a written instrument which was or purported to be, or which was calculated to become or represented if completed, a credit card, or other instrument which did or may have evidenced, created, transferred, terminated, or otherwise affected a legal right, interest, obligation or status, to wit said Police Officer, acting with another individual, identity known to the Department, without permission or authority, completed an application for a credit card in the name of said other individual's daughter, activated said credit card when said application was approved, made hundreds of dollars worth of purchases with said credit card, and incurred late fees on said credit card by not making timely required payments, having an adverse effect on the credit rating of said individual in whose name the credit card was issued

P G 203-10, Page 1, Paragraph 5 – PERFORMANCE ON DUTY –
PROHIBITED CONDUCT –
GENERAL REGULATIONS

N Y S Penal Law Section 170 10(1) – FORGERY IN THE SECOND DEGREE

2 Said Police Officer Desiree Taylor, while assigned to the 75th Precinct, in or about March 2008 through June 2008, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer, with knowledge that said instrument was forged, and with intent to defraud, deceive, or injure another, uttered or possessed a forged instrument, to wit said Police Officer, acting with another individual, identity known to the Department, without permission or authority, possessed a credit card in the name of said other individual's daughter

P G 203-10, Page 1, Paragraph 5 – PERFORMANCE ON DUTY –
PROHIBITED CONDUCT –
GENERAL REGULATIONS

N Y S Penal Law Section 170 25 – CRIMINAL POSSESSION OF A
FORGED INSTRUMENT IN THE
SECOND DEGREE

3 Said Police Officer Desiree Taylor, while assigned to the 75th Precinct, in or about March 2008 through June 2008, did engage in conduct prejudicial to the good

¹ The trial record was held open until December 10, 2010, for the receipt in evidence of a verified transcript of the Respondent's official Department interview

POLICE OFFICER DESIREE TAYLOR

order, efficiency, or discipline of the Department, in that said Police Officer stole property, to wit said Police Officer, acting with another individual, identity known to the Department, without permission or authority, stole a credit card in the name of said other individual's daughter

P G 203-10, Page 1, Paragraph 5 – PERFORMANCE ON DUTY –
PROHIBITED CONDUCT –
GENERAL REGULATIONS

N Y S Penal Law Section 155 30(4) – GRAND LARCENY IN THE
FOURTH DEGREE

4 Said Police Officer Desiree Taylor, while assigned to the 75th Precinct, in or about March 2008 through June 2008, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer knowingly possessed stolen property with intent, with intent² to benefit himself³ or a person other than an owner thereof or impeded the recovery by an owner thereof, to wit said Police Officer, acting with another individual, identity known to the Department, without permission or authority, possessed a credit card in the name of said other individual's daughter

P G 203-10, Page 1, Paragraph 5 – PERFORMANCE ON DUTY –
PROHIBITED CONDUCT –
GENERAL REGULATIONS

N Y S Penal Law Section 165.45(2) – CRIMINAL POSSESSION OF STOLEN
PROPERTY IN THE FOURTH DEGREE

5 Said Police Officer Desiree Taylor, while assigned to the 75th Precinct, in or about March 2008 through June 2008, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer stole property, to wit said Police Officer, acting with another individual, identity known to the Department, without permission or authority, utilized a credit card in the name of said other individual's daughter to purchase goods or services, including gasoline for said Police Officer's personal vehicle

P G 203-10, Page 1, Paragraph 5 – PERFORMANCE ON DUTY –
PROHIBITED CONDUCT –
GENERAL REGULATIONS

N Y S Penal Law Section 155 25 – PETIT LARCENY

² The repetition of the phrase "with intent" appears to be a typographical error

³ As worded in the charge even though the Respondent is a female

POLICE OFFICER DESIREE TAYLOR

6 Said Police Officer Desiree Taylor, while assigned to the 75th Precinct, in or about March 2008 through June 2008, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer knowingly possessed stolen property with intent, with intent⁴ to benefit himself⁵ or a person other than an owner thereof or impeded the recovery by an owner thereof, to wit said Police Officer, acting with another individual, identity known to the Department, without permission or authority, possessed or utilized goods or services, including gasoline for said Police Officer's personal vehicle

P G 203-10, Page 1, Paragraph 5 – PERFORMANCE ON DUTY –
PROHIBITED CONDUCT –
GENERAL REGULATIONS

N Y S Penal Law Section 165 40 - CRIMINAL POSSESSION OF STOLEN
PROPERTY IN THE FIFTH DEGREE

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification No 1 and Specification Nos 3 through 6. The Respondent is found Not Guilty of Specification No 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

Many of the facts in this case are not in dispute. Merrick White (Merrick), a citizen of Jamaica, is the father of [REDACTED] and Kayon White (Kayon) who

⁴ The repetition of the phrase "with intent" appears to be a typographical error.

⁵ As worded in the charge even though the Respondent is a female.

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were both born in Jamaica. In 1998, White moved to the United States (the U S). He met the Respondent and, after they were engaged to be married, he moved into her residence at [REDACTED] apartment [REDACTED] the Respondent's apartment). Merrick brought his daughter Renee to the U S. When he brought his daughter Kayon to the U S in August, 2004, Kayon moved in with her father and the Respondent and resided at the Respondent's apartment.

In September, 2006, Kayon moved out of the Respondent's apartment. In March, 2008, HSBC Bank (HSBC) mailed an unsolicited application to open a "Platinum MasterCard" credit card account addressed to "Kayon White" at the Respondent's apartment. [Department's Exhibit (DX) 1]

The Respondent acknowledged, at her official Department interview [Court Exhibit (CX) 1] and in her testimony at this trial, that with Merrick's assistance she completed the application by entering the information requested in the application. She wrote Kayon's social security number and birth date on the application and on the line labeled "Home Phone," the Respondent entered her residence phone number "[REDACTED]". On the line "Email Address (Optional)," the Respondent entered her personal email address "[REDACTED]" at "[REDACTED]". On the line "Name of Employer," the Respondent entered "[REDACTED]". Under "Annual Household Income," the Respondent entered "\$60,000". The Respondent signed "Kayon White" on the "Applicant Signature" line and mailed the application back to HSBC.

Based on the information contained in the application, HSBC mailed a credit card with the name "Kayon White" on the card to the Respondent's apartment. The

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Respondent and Merrick used this credit card to make purchases [Respondent's Exhibit (RX) A]

HSBC mailed a letter containing a Personal Identification Number (PIN) for the HSBC card to "Kayon White" at the Respondent's apartment. Merrick opened the letter and gave it to the Respondent. The Respondent and Merrick used this PIN to make cash withdrawals at ATM machines (RX A)

The Department's Case

The Department called Kayon White and Detective Gaetano Competiello as witnesses

Kayon White

Kayon, who is 20-years old, testified that after she moved out of the Respondent's apartment in September, 2006, she moved in with her cousin at her cousin's residence in Brooklyn. Kayon testified that because she was not speaking to her father and the Respondent, they did not know where she was living in Brooklyn. In early 2008, after she had turned 18 years old, she applied to Macy's for a store credit card. She was approved and she received a Macy's credit card with a \$100.00 credit limit. During the summer of 2008, she applied for a credit card at Chase Bank. In applying for these cards she listed her cousin's address in Brooklyn as her home address because that was her residence at that time. She was disapproved by Chase Bank and she was told that the disapproval was based on her credit rating. Since she had always paid her Macy's credit card on time and had never exceeded her Macy's credit limit, she did not understand why Chase Bank had disapproved her application because of her credit rating.

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Shortly thereafter, she received a letter at her cousin's residence in Brooklyn addressed to her from HSBC. The letter stated that if she did not immediately pay HSBC \$48.00 that was due on her credit card account, HSBC would refer her debt to a credit bureau. She telephoned HSBC's credit department and was told that a "Platinum MasterCard" credit card account had been opened in her name in March, 2008, and that the credit card had been mailed to the Respondent's apartment. She told HSBC's credit department that she had not applied for any HSBC credit card and that she had never received or used the credit card that HSBC had issued in her name. HSBC mailed her a copy of the application for the card (DX 1) and HSBC also mailed her copies of two money orders, one for \$25.00 (DX 2) and one for \$200.00 (DX 3), that had been sent to HSBC to make payments for credit card charges. After she received these documents, she walked into the 73 Precinct to file a complaint and brought this documentation with her. She asserted that "it took me until 2009 to clear up" the credit problems that the HSBC credit card account had caused to her credit history and rating.

On cross-examination, Kayon testified that she never told her father or the Respondent that she wanted to have a credit card in her own name and that her father and the Respondent never told her that she was too young to have her own credit card. Kayon testified that neither her father nor the Respondent ever requested her permission to open a credit card account in her name. Kayon denied that she was aware that her sister [REDACTED] had a VISA credit card account in her own name. She confirmed that she lived with [REDACTED] from the end of 2008 to 2010. She denied that she had walked into the 73 Precinct for the specific purpose of getting the police to arrest the Respondent. She confirmed that she told detectives at the 73 Precinct, "I think I know who opened the HSBC account,"

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because she had recognized the Respondent's handwriting on the two money orders HSBC sent her (DX 2 and 3)

She agreed that before she moved out of the Respondent's apartment, the Respondent had purchased clothing for her. Kayon testified that she had no contact whatsoever with her father during the time period between a December, 2006, trip to Jamaica and a telephone conversation they had in 2008 after she had learned about the existence of the HSBC credit card. Kayon agreed that when she was living in the Respondent's apartment, the Respondent had a rule that Kayon was not allowed to have sex with her boyfriend inside the residence. Kayon denied that she had ever violated this rule. She asserted that she only had sex with her boyfriend outside of the residence.

Detective Gaetano Competiello

Detective Competiello, assigned to the Internal Affairs Bureau (IAB), Group 34, testified that Kayon's walk-in allegation against the Respondent was referred to IAB for investigation by the 73 Precinct when it was discovered that the Respondent was a member of the service (MOS). Competiello obtained the copy of the application for the HSBC credit card (DX 1) and the copies of two money orders for \$25.00 (DX 2) and \$200.00 (DX 3) that were mailed to HSBC to pay for credit card charges. Competiello contacted Maria Diaz who is employed by HSBC's Fraud Unit. Diaz told Competiello that the HSBC MasterCard credit card account in the name of "Kayon White" had incurred overdraft fees and late payment fees and that these fees were not paid on time.

Competiello testified that he interviewed Kayon and that he directed Kayon to sign her signature on the bottom right hand corner of one of the money orders (DX 3).

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On June 19, 2009, Competiello conducted a tape-recorded official Department interview of the Respondent (CX 1) At this interview, the Respondent provided the information that is detailed in the Introduction section of this Decision

On cross-examination, Competiello confirmed that HSBC had agreed to accept \$225 00 as the amount that was owed on the MasterCard credit card account in the name of "Kayon White " Competiello confirmed that he had prepared a "Credit Card Transaction History" which listed all the charges made to the HSBC credit card account in the name of "Kayon White" (RX A) Competiello also confirmed that he had prepared a "personnel profile" regarding the Respondent (RX B)

The Respondent's Case

The Respondent called Merrick White as a witness and testified on her own behalf

Merrick White

Merrick testified that as a result of financial problems he could not apply for a credit card in his own name and because the Respondent had previously declared bankruptcy she could not apply for a credit card in her own name After Merrick brought his daughter [REDACTED] to the U S , the Respondent, Merrick and [REDACTED] all agreed that they would apply for a "family" credit card in [REDACTED]'s name that they would all use and which would serve the purpose of giving [REDACTED] a good credit rating Merrick testified that the Respondent did the "paperwork" to obtain a credit card in [REDACTED]'s name and that when the card arrived, they all used it.

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After Merrick's daughter Kayon had moved out of the Respondent's apartment, an envelope from HSBC addressed to Kayon arrived at the Respondent's apartment in March, 2008. Merrick told the Respondent to open the envelope. The Respondent opened the envelope and told Merrick that it contained an invitation to Kayon to open a HSBC credit card account (DX 1). Merrick testified that he telephoned Kayon and told her about the invitation she had received and that, as with the card they had obtained for [REDACTED], they would all use the card and it would help Kayon establish good credit. Merrick asserted that Kayon told him, "Go ahead and take it out. Get it for me."

Merrick told the Respondent to do the "paperwork" and apply for the credit card. Merrick testified that after the credit card arrived in the mail, he and the Respondent used the credit card on a trip they made to the South and that Kayon also had access to the credit card and had used the credit card to buy sneakers (RX A). Kayon later told Merrick, "I got Desiree. I don't like her."

On cross-examination, Merrick asserted that in March, 2008, he had Kayon's phone number but he could not presently recall her phone number. He also asserted that he knew the address that she was living at in Brooklyn, "somewhere off [REDACTED] Street, but that he could not presently recall the specific address."

The Respondent

The Respondent testified, consistent with Merrick's testimony and the statements she made at her official Department interview on June 19, 2009 (CX 1), that when Kayon was still living with her and Merrick, Kayon violated her rule that Kayon could not have sex with her boyfriend inside the Respondent's apartment. The Respondent asserted that

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Kayon disliked her even though she had always been kind to Kayon and had bought her clothing. The Respondent asserted that she had personally "saved" Kayon from being sent back to Jamaica by Merrick.

When the application from HSBC addressed to Kayon arrived, Merrick told her that Kayon consented to allowing the Respondent to submit an application to HSBC to issue a credit card in Kayon's name. Merrick provided her with Kayon's social security number and birth date to enter on the application, although she entered an incorrect year of birth. The Respondent asserted in her testimony that she had no intent to commit any crime because she believed that Kayon had allowed her and Merrick to apply for and use the HSBC card as the "family credit card." The Respondent asserted that Kayon had access to the card and had used the card to purchase sneakers (RX A).

On cross-examination, she confirmed that she had worked at [REDACTED] Cleaners before she was appointed to the Department but that Kayon had never worked there. The Respondent asserted that she entered [REDACTED] on the HSBC application as Kayon's place of employment because she still knew some people who worked at [REDACTED] Cleaners and she intended to contact them and get Kayon a job there. The Respondent confirmed that she entered on the application her personal email address so that communications with HSBC about the credit card account would be through her personal email. She confirmed that Kayon had no personal email address and that Kayon had no access to the Respondent's personal email account.

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FINDINGS AND ANALYSIS

Introduction

The Respondent is charged with having committed the crimes of larceny, criminal possession of stolen property, forgery and criminal possession of a forged instrument, arising out of her March, 2008, action of completing, signing and mailing back to HSBC an application that HSBC had mailed to Kayon at the Respondent's apartment inviting Kayon to open a "Platinum MasterCard" credit card account (DX 1), and the Respondent's subsequent actions, in concert with Merrick, of using the credit card that HSBC issued to Kayon to withdraw cash from ATM machines and to make purchases for herself and Merrick (RX A)

The Respondent asserted in her testimony that she had no intent to commit any crime because she truly believed that Kayon had told Merrick that she consented to allowing the Respondent to submit an application to HSBC to issue a credit card in Kayon's name and to allowing her and Merrick to use that card as the "family credit card " The Respondent argued that these charges should be viewed as nothing more than an attempt by Kayon to punish the Respondent, for personal grievances completely unrelated to the HSBC credit card, by falsely claiming that she did not know that the Respondent had applied for, received and used an HSBC credit card in her name

The Respondent's assertion that she truly believed that Kayon had given Merrick and her permission to apply for and use the HSBC card, is belied by the fact that the only phone number the Respondent entered on the application was her residence phone number, even though Merrick testified that he knew Kayon's phone number and that he also knew her address in Brooklyn

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The Respondent's assertion that she had no intent to hide from Kayon the fact that she and Merrick were applying for the card, is also belied by the fact that the Respondent entered on the application her personal email account, which Kayon had no access to, even though entering an email address was designated on the application as "optional ". The Respondent confirmed that she had entered her personal email address on the application so that all communications with HSBC regarding the credit card account would be conducted through her personal email

The fact that Respondent entered nothing on the application that would have enabled HSBC to directly contact Kayon supports the Department's position that the Respondent and Merrick intended to hide from Kayon the fact that they had applied for a credit card in her name

Kayon testified that she first learned that a credit card had been issued by HSBC in her name when she received a letter from HSBC, at her residence in Brooklyn, stating that if she did not immediately pay HSBC \$48 00 that was due on her credit card, her overdue account would be referred to a credit bureau. Kayon's testimony is supported by the undisputed fact that she requested that HSBC mail her the application for the card (DX 1) and that she brought this application with her when she walked into the 73 Precinct to file a complaint. If Kayon had actually given Merrick and the Respondent permission to fill out an application for an HSBC credit card in her name, it is unlikely that she would have requested that HSBC send her the application much less provide this application to Department investigators as she did. Also, the Respondent acknowledged at her official Department interview that when the letter from HSBC containing the PIN

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for the HSBC credit card arrived, Merrick did not call Kayon to tell her about the PIN (CX 1 p 19)

Based on the above, I credit Kayon's testimony that neither her father nor the Respondent ever requested her permission to open an HSBC credit card account in her name and that she did not give the Respondent permission to sign her name on the "Applicant Signature" line of the application (DX 1)

Although the Respondent's connection to the credit card that HSBC issued to Kayon first came to light when Kayon lodged a complaint against the Respondent at the 73 Precinct, the Respondent's position that she had no *mens rea* to commit any crime completely ignores her knowing actions with regard to the fraud that she, acting in concert with Merrick, perpetrated on HSBC. The record establishes that as a result of the lies and misrepresentations that the Respondent entered on the application that HSBC had mailed to Kayon, the Respondent and Merrick obtained the ability to access an HSBC line of credit that HSBC had no intention of granting them access to.

On the application that HSBC mailed to Kayon at the Respondent's address, the Respondent knowingly and falsely wrote that Kayon was then employed by [REDACTED] Cleaners," which the Respondent knew was untrue because Kayon had never worked there. This entry also belies the Respondent's claim that she had entered "family" information on the application because she, Merrick and Kayon had agreed to obtain a "family credit card" for their joint use. The Respondent was fully aware in March, 2008, that her own employment at [REDACTED] Cleaners had ended before she was appointed as a police officer on January 9, 2006.

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The Respondent also knowingly and falsely entered on the application that Kayon had an "Annual Household Income" of "\$60,000" (DX 1) This entry constituted an intentional deception because the Respondent knew that Kayon had no such income and that she had not actually resided in the Respondent's household for well over a year I reject the Respondent's attempt to justify this deception by claiming that Kayon would "come and go" at the Respondent's apartment

At the time she made these false entries and misrepresentations and signed "Kayon White" on the applicant signature line, it was the Respondent's intention to induce HSBC to issue a credit card and a line of credit that she and Merrick would be able to access to obtain cash and to make personal purchases Based on the above, even if I credited Merrick's claim that Kayon consented to allowing him and the Respondent to submit the application, which I do not, by giving such consent Kayon would merely have become a co-conspirator in the Respondent's and Merrick's plan to induce HSBC to issue a line of credit based on false information

The fraud that she and Merrick perpetrated on HSBC in order to obtain the credit card continued after the Respondent received the credit card and the PIN for the card in the mail The Respondent admitted that she knew that by issuing the credit card in Kayon's name HSBC was only authorizing Kayon to use the card Despite this knowledge, the Respondent admitted that she and Merrick used the credit card to obtain cash at ATM machines and to make credit card purchases that she knew would cause HSBC's records to falsely reflect that cash had been directly obtained from an ATM by Kayon and that all of the credit card purchases had actually been made by Kayon

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The Respondent acknowledged that neither she nor Merrick even attempted to apply for a credit card in their own names because as a result of her bankruptcy and his financial status they knew that they could not qualify to obtain a credit card on their own. I can only conclude that the Respondent was willing to engage in actions that she knew, or should have known, constituted crimes in order to be able to obtain cash from ATM machines and in order to be able to pay for purchases with a credit card.

I will now address the specific charges against the Respondent.

Specification No. 1 and Specification Nos. 3 through 6

The Respondent is charged with stealing the HSBC credit card, criminal possession of the stolen credit card, forgery, and with engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department by, with intent to defraud and deceive and acting in concert with Merrick, completing the application for the credit card in the name of Kayon, activating the card after the application was approved by HSBC, making hundreds of dollars worth of purchases using the credit card, and incurring late fees on the card by not making timely required payments which had an adverse effect on Kayon's credit rating. The wording of these charges mirrors the Penal Law crimes of grand larceny in the fourth degree, petit larceny, criminal possession of stolen property in the fourth and fifth degrees, and forgery in the second degree.

I find the Respondent Guilty of Specification No. 1 and Specification Nos. 3 through 4 based on the following analysis:

A person is guilty of the crime of grand larceny in the fourth degree when she steals property and when the property consists of a credit card ⁶ The New York Court of Appeals has held that where, as here, it is proved that the person who completed a bank application seeking a line of credit made intentional false representations and misstatements on the application, the person is guilty of larceny by false pretenses,⁷ and that in proving the element of reliance of the crime of larceny by false pretenses, the issuance of the credit is sufficient proof that the misrepresentations induced an officer in the bank's credit approval department to grant the requested credit ⁸

A person is guilty of the crime of criminal possession of stolen property in the fourth degree when she knowingly possesses stolen property, with intent to benefit herself and the property consists of a credit card ⁹ The New York Court of Appeals has held that where, as here, it is proved that a person obtained possession of a credit card by committing the crime of grand larceny in the fourth degree, the person is guilty of the crime of criminal possession of stolen property in the fourth degree notwithstanding the lack of an actual credit relationship between the issuer of the card and the holder of the card ¹⁰

With regard to the crime of forgery in the second degree, a person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, she falsely completes a written instrument which is if completed a commercial instrument, or

⁶ Penal Law 155.30 (4)

⁷ See *People v. Zimmerman*, 81 N.Y.2d 979 (1993), *People v. Ramirez*, 168 A.D.2d 908 (1990)

⁸ See *People v. Termotto*, 81 N.Y.2d 1008 (1993)

⁹ Penal Law 165.45 (2)

¹⁰ See *People v. Thompson*, 99 N.Y.2d 38 (2002)

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other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status ¹¹ An application for a credit card constitutes a written instrument of a nature to evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status ¹² A person falsely completes a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer ¹³

Here, the Respondent completed the application for the HSBC credit card by inserting false information, such as that Kayon was employed at [REDACTED] Cleaners, which thereby converted the incomplete application into a complete one, without Kayon's authority, so that the completed application appeared and purported to be in all respects an authentic creation of or fully authorized by Kayon, its ostensible maker or drawer Since I have found that Kayon did not authorize the Respondent or Merrick to apply to HSBC to issue a credit card to Kayon, the Respondent committed the crime of forgery in the second degree by falsely completing the application and by forging Kayon's name on the "Applicant Signature" line of the application (DX 1)

Based on the above analysis, I find the Respondent Guilty of Specification No 1 and Specification Nos 3 through 4

¹¹ Penal Law 170.10 (1)

¹² See *People v. Le Grand*, 81 A.D.2d 945 (3rd Dept. 1981)

¹³ Penal Law 170.00 (5)

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With regard to Specification Nos 5 and 6, I find the Respondent Guilty of engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department because she used the HSBC credit card to purchase, possess and use goods or services, including gasoline for her personal vehicle (RX A), when she knew full well that Kayon was the only person who had been authorized by HSBC to use the credit card

Although these two charges also cite to the Class A Misdemeanors of petit larceny and criminal possession of stolen property in the fourth degree, it is not clear that these misdemeanors are applicable to the facts here ¹⁴

Thus, as to Specification Nos 5 and 6, I find the Respondent Guilty of having engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department

Specification No 2

It is charged that the Respondent committed the crime of criminal possession of a forged instrument in the second degree¹⁵ in that, with intent to defraud, deceive, or injure another, she possessed a forged instrument without permission or authority in that she possessed a credit card bearing the name "Kayon White "

The Assistant Department Advocate argued in his summation that the Respondent's action of possessing a credit card which bore Kayon White's name without having obtained Kayon's permission to possess the card constitutes sufficient proof that

¹⁴ See Unlawful use of credit card, Penal Law 165 17, also a Class A Misdemeanor, which only makes it unlawful to obtain property or a service using a revoked or cancelled credit card

¹⁵ Penal Law Section 170 25

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the Respondent is guilty of the crime of criminal possession of a forged instrument in the second degree. The Advocate's argument ignores a key element of this crime.

New York appellate decisions interpreting the "forged instrument" element of this crime have consistently held that a written instrument (whether issued by a government agency or by a private entity such as a bank) is not a "forged instrument" unless the instrument that has been issued is physically altered in a manner which affects the instrument's genuineness,¹⁶ even where the instrument contains false information.¹⁷ Thus, a thief who attempted to cash a bank check made out to another party could not be found guilty of criminal possession of a forged instrument in the second degree where the thief did not create the check and he did not alter the check.¹⁸

A thief's act of endorsing the back of a stolen check by signing the name of the payee has been found to constitute a physical alteration of the instrument which affects the instrument's genuineness.¹⁹ However, the Respondent here was never asked, either at her official Department interview or on cross-examination at this trial, whether she had signed "Kayon White" on the signature strip on the back of the HSBC credit card²⁰ and the Department offered no other proof that the Respondent physically altered the credit card that HSBC issued.

As a result, the Respondent is found Not Guilty of Specification No. 2.

¹⁶ See *People v. Mattocks*, 12 N.Y.3d 326 (2009), *People v. Cannarozzo*, 62 A.D.2d 503 (4th Dept. 1978).

¹⁷ *People v. Asaro*, 94 N.Y.2d 792 (1999).

¹⁸ *People v. Seavey*, 305 A.D.2d 937 (3rd Dept. 2003).

¹⁹ See *People v. Moore*, 41 A.D.3d 1202 (4th Dept. 2007).

²⁰ Moreover, I have found no reported case holding that doing so constitutes the equivalent of endorsing the back of a check.

POLICE OFFICER DESIREE TAYLORPENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974)

Respondent was appointed to the Department on January 9, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended that the Respondent be DISMISSED from the Department.

In a recent decision, Disciplinary Case No. 78273/02 signed on April 28, 2010, a 19-year Police Communications Technician (PCT) was dismissed from the Department for obtaining telephone service with intent to avoid payment by misrepresenting on the application that she sent to her telephone service provider that this Department was responsible for paying \$1915.00 in personal telephone calls she made using her calling card. In his decision imposing this penalty, the Police Commissioner wrote that he had determined that the PCT must be Dismissed from the Department because her "intentional, deceptive and larcenous behavior connotes a carefully calculated and structured course of conduct designed to deceive the Department."

Here, the Respondent engaged in intentional, deceptive and larcenous behavior connoting a carefully calculated course of conduct designed to deceive HSBC regarding Kayon's residence, her phone number, her employment and her household income, to induce HSBC to issue a credit card in Kayon's name which the Respondent and Merrick then used to withdraw cash and make purchases even though the Respondent knew that Kayon was the only person who had been authorized by HSBC to use the card.

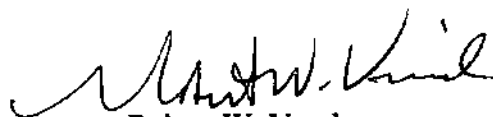
POLICE OFFICER DESIREE TAYLOR

Moreover, the Respondent's use of the card resulted in overdraft fees and late payment fees which, because they were not paid in a timely manner, had a negative effect on Kayon's credit history

At the point in time when the Respondent completed the application for the HSBC credit card (March, 2008), it had been less than two years since the Respondent had graduated from the Police Academy where she received extensive instruction regarding the Penal Law including the very crimes she is accused of having committed here

Therefore, it is recommended that the Respondent be DISMISSED from the New York City Police Department

Respectfully submitted,



Robert W Vinal
Assistant Deputy Commissioner - Trials

APPROVED
JUL 26 2011
RAYMOND W KELLY
POLICE COMMISSIONER

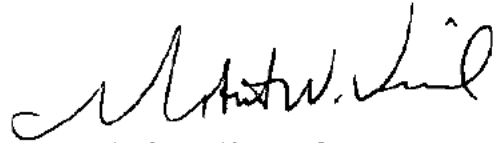


POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER DESIREE TAYLOR
TAX REGISTRY NO 940795
DISCIPLINARY CASE NO 85763/09

The Respondent received an overall rating of 3.5 on her 2009 evaluation, and 3.5 on her 2008 evaluation. She has no medals [REDACTED]
[REDACTED] She has no prior formal disciplinary record.

For your consideration



Robert W. Vinal
Assistant Deputy Commissioner – Trials